

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 02-31000

COY LEE McCARTER
SUSAN RYMER McCARTER

Debtors

MEMORANDUM AND ORDER

Before the court is the motion entitled "Motion of Joe Forest Justice for a Temporary Restraining Order" (Motion) filed June 26, 2003, by a creditor, Joe Forest Justice, *pro se*, requesting the issuance of a temporary restraining order prohibiting the Debtors and anyone acting on their behalf from having any physical or verbal contact with Mr. Justice or any members of his immediate family.

Pursuant to Rules 7001, 7003, and 7065 of the Federal Rules of Bankruptcy Procedure, the only procedure for requesting injunctive relief, including a temporary restraining order, is by the filing of a complaint commencing an adversary proceeding. In addition, the action must be served in accordance with Rule 7004 of the Federal Rules of Bankruptcy Procedure. See FED. R. BANKR. P. 7004. Because "Rule 7001 requires that a request to obtain an injunction, or other equitable relief be filed as an adversary proceeding[, the party seeking such relief] must file a complaint, provide for issuance of a summons, and thereafter serve the summons and complaint pursuant to Rule 7004." *In re Martin*, 268 B.R. 168, 172 (Bankr. E.D. Ark. 2001). A party "may not obtain an injunction by motion." *Id.*; see also *In re Wallace*, 288 B.R. 139, 149 (Bankr.

N.D. Okla. 2002) (“The relief sought . . . is equitable and injunctive in nature [and s]uch relief can only be obtained from the bankruptcy court through the filing of an adversary proceeding.”); *Harris v. M.E.I. Diversified, Inc. (In re M.E.I. Diversified, Inc.)*, 156 B.R. 814, 815 (Bankr. E.D. Miss. 1993) (“[T]he motion . . . for a temporary restraining order is denied for want of cause and for want of an Adversary Proceeding[.]”); *Nasco P.R., Inc. v. Chemical Bank (In re Nasco P.R., Inc.)*, 117 B.R. 35, 38 (Bankr. D.P.R. 1990) (“A party wishing to invoke the court’s injunctive power under Section 105(a) must file an adversary proceeding under Part VII of the Bankruptcy Rules[.]”). All adversary proceedings must be accompanied by a \$150.00 filing fee (28 U.S.C. § 1914(a)) and must also comply with Rules 7003-1 and 7004-2 of the Local Rules of the United States Bankruptcy Court for the Eastern District of Tennessee.

Moreover, even if the court could consider Mr. Justice’s Motion procedurally, it lacks the requirements set forth in Federal Rule of Civil Procedure 65(b), which states that “Motions for . . . temporary restraining orders must be supported by specific facts shown by affidavit or verified complaint.” *Garner v. Shier (In re Garner)*, 246 B.R. 617, 624 (B.A.P. 9th Cir. 2000) (citing FED. R. CIV. P. 65(b) incorporated by FED. R. BANKR. P. 7065). Mr. Justice’s Motion is not verified, nor does it have any supporting affidavits attached thereto regarding the events described therein.

For the above reasons, Mr. Justice’s Motion is DENIED, without prejudice to his filing of a complaint pursuant to Part VII of the Federal Rules of Bankruptcy Procedure.

SO ORDERED.

ENTER: June 30, 2003

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE